IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20563 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? Yes

2 To be referred to the Reporter or not ? Yes

3 Whether their Lordships wish to see the fair copy of the judgment ? No

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? No

5 Whether it is to be circulated to the civil judge ? No

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SURESHBHAI RATILAL TANNA - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR PM THAKKAR FOR M/S THAKKAR ASSOC. for Petitioner(s) : 1,
MR LR POOJARI, AGP for Respondents

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 23/03/2006

CAV JUDGMENT

1. Rule. Mr.L.R.Poojari, learned AGP appears and waives service of rule on behalf of respondents.

2. Sureshbhai Ratilal Tanna, petitioner, has filed this petition under Article 226 of the Constitution of India, challenging the legality and validity of the order of District Magistrate, Rajkot, - respondent No.2 seeking to detain the petitioner under provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "PASA"). The said petition was filed on 8th October, 2005, and the Court has issued notice on 11th October, 2005, and passed the orders from time to time and ultimately on 29th December, 2005, this Court passed the order that during pendency of petition the authority will not take any coercive measure in this behalf.

3. The facts giving rise to this petition are as under:-

3.1 Mr.P.M.Thakkar, learned Senior Counsel for the petitioner stated that the detention order was passed (which is still not executed – pre-detention matter) is as under:

3.1A There is a land bearing Survey No.466 paiki ad-measuring 3 Acre 30 Gunthas which was purchased by Ashok Co-operative Housing Society in 1965 by Registered Sale Deed by the then promoters and office bearers of the society from the predecessor in title Tapu Bechar. According to the claim of the revenue authorities, the land does not belong to the previous owner Tapu Bechar but the same belongs to Government and therefore the society has encroached upon the Government land and it amounts to grabbing of the Government land.

3.2 The learned counsel submitted that it is pertinent to note that the land in question which was purchased by the housing society in 1965 by registered sale deed dated 20.10.1965 by the then President and Promoters of the society. In support of the same he has relied upon **Annexure "A"** page 14 which provides said "sale deed" in this behalf. It is the case of the petitioner that the petitioner was neither office bearer nor the petitioner had

attributed any rule in purchasing the said land for the society. He further submitted that somewhere in 1982-83 upon implementation of Town Planning Scheme in Rajkot City, the society was reallocated Final Plot No.939 ad-measuring 10450 sq.mtrs. The society was alloted a final plot. Out of that the society allotted 54 plots to the members and possession was handed over to them. The petitioner became member of the society in 1984 and was allotted plot no.11 by the society.

3.3 From the year 1982 to 2000, the society was managed by the President Ratilal Dhanjibhai. Thereafter society went into liquidation and on 1.10.2000 the District Registrar, State of Gujarat, appointed custodian to the said society. From 1.10.2000 to 13.6.2002 the said custodian has managed the affairs of the society.

3.4 The Managing Committee was elected on 13.6.2002 and took over the charge of the society. On the same day, the petitioner was elected as Honorary

Secretary of the said society. At this stage it is relevant to note that the Mamlatdar, Rajkot City, issued a notice on 27.5.1996 under Section 61 of the Land Revenue Code which provides penalties for unauthorized occupation of land inter-alia alleging that the society has encroached upon the Government land and therefore the encroachment should not be removed. The society in response to aforesaid notice filed reply on 20.9.1996 and produced registered sale deed under which the society had purchased the same from a private party in 1965. The Mamlatdar, Rajkot City after examining the revenue record and the evidence produced by the society vide an order dated 8.4.1999 gave a finding that there is no evidence to establish that it is a Government land. The encroachment proceedings were therefore dropped vide order dated 8.4.1999.

3.5 In support of the same, the learned advocate has relied upon **Annexure "C"** the order dated 3.4.1999 passed by the Mamlatdar, Rajkot City (relevant pages 48 and 49). The learned counsel

further submitted that the Collector, Rajkot City thereafter issued a notice dated 21.2.2000 to the society as to why the above order passed by the Mamlatdar should not be taken in review. The society has submitted its objections and the said proceedings are still pending for adjudication.

3.6 Being aggrieved and dissatisfied with the said action the society also filed appeal before the Gujarat Revenue Tribunal challenging the notice issued by the Collector, Rajkot. Thus, the title of the Government in respect of the land is yet not fully adjudicated and established and the main dispute is pending for adjudication before the revenue authorities. The learned advocate therefore submitted that till the final adjudication and until it is held that the land in question is Government land, the detaining authority cannot presume the title to the land of Government and proceed to pass the detention order against the petitioner.

3.7 The learned advocate further submitted that

the Ex-President Shri Ratilal Dhanjibhai who remained from 1982-2000 as President of the society was detained as “Property Grabber” under PASA on the same grounds for which he has relied upon **Annexure “F”** (pages 59 to 73) wherein the grounds of detention has been given. However, the Advisory Board did not approve the detention and the order of detention has been revoked by the Government in this behalf.

3.8 In view of the aforesaid facts and circumstances of the case, the learned advocate submitted that the society was managed by custodian appointed by the District Registrar, State of Gujarat from 1.10.2000 to 13.6.2002 and transferred the plots of the society in favour of purchasers. Even the custodian of the Government at no point of time took the stand that the land possessed by the society is a Government land.

3.9 As indicated above, the petitioner was elected as Honorary Secretary of the society on 13.6.2002. As a secretary of the society, the

petitioner has to implement and carry out the resolutions passed by the Managing Committee of the society. It is pertinent to note that the petitioner has neither purchased the land for the society nor the petitioner has sold any plot to anybody. The learned advocate submitted that if any member sells his plot to the buyer, the Managing Committee of the society has to give no objection, and as and when, any member has sold the land by executing sale deed, the purchaser would produce it before the society and as a Secretary, the petitioner has to enter the name of the purchaser in the record of the society as was done by the custodian appointed by the Government. Thus, the petitioner cannot be said to be “property grabber” as defined under sec.2(h) of the Act.

3.10 The learned advocate submitted that however to the great shock and surprise of the petitioner, though the proceedings in respect of the land in question is pending for final adjudication, the District Magistrate, Rajkot has passed an order of detention under PASA on 25.9.2002 and has detained

Ex-President – Ratilal Dhanjibhai Rajdev as the property grabber, who is accused no.1 in the FIR. The petitioner therefore has a genuine apprehension that the petitioner will be detained under PASA to the order dated 25.9.2005 passed by the respondent No.2 District Magistrate, Rajkot City which is annexed and marked as Annexure “F” to the petition.

3.11 Being aggrieved and dissatisfied with the said action, the petitioner has filed present petition against execution of detention order on following main, amongst other grounds.

4. Before the learned advocate for the petitioner submitted the present petition, Mr. L.R. Poojari, learned AGP raised a preliminary contention.

4.1. The learned AGP submitted that the order of detention is not executed and the petitioner has not surrendered to the order passed by the authorities as such no right much less fundamental right of the petitioner is violated by the respondent authorities.

The petitioner is not entitled to have the copy of the grounds of detention at the pre-detention stage. By way of filing this petition, the petitioner cannot compel the authorities to disclose the grounds of detention before the same is executed. As per the settled legal position of law laid down by the Hon'ble Supreme Court of India and reiterated time and again by the Hon'ble Apex Court as well as by this Court the petitioner is required to surrender first before challenging the order of detention which is not served upon him and not executed by the authority and therefore, the present petition filed by the petitioner invoking the extraordinary jurisdiction under Article 226 of the Constitution of India cannot be treated as habeas corpus petition. As per the provisions of the Constitution and the provisions of PASA Act the petitioner is entitled to have the copy of grounds of detention and the accompaniments thereto only after the order of detention is executed and he is detained. Therefore, the respondents have preliminary objection about the maintainability of the present petition.

4.1A He has also relied on the judgement of the Hon'ble Supreme Court in the case of UNION OF INDIA AND OTHERS VS. PRASMAL RAMPURIA reported in (1998) 8 SCC 402 and also another judgement in the case of UNION OF INDIA VS. VIDYA BAGARIA reported in AIR 2004 SC 2220 as well as judgement in the case of UNION OF INDIA AND OTHERS VS. MUNEESH SUNEJA reported in AIR 2001 SC 854.

4.1B Mr. L.R. Poojari, learned AGP has relied upon paras 31 and 32 of the judgement of the Hon'ble Supreme Court in the case of Additional Secretary to the Govt. of India and others Vs. Smt. Alka Subhash Gadia and another reported in 1992 Supp. (1) SCC 496 and stated that this Court may not interfere in this behalf.

4.2 The learned AGP has also relied upon the judgment of this Court in Special Civil Application No.7721 of 2005 in a case of pre-detention, even after a complaint filed against the petitioner

therein was quashed by this Court, without expressing any opinion on the merits of the case, considering the settled legal position this Court was pleased to dismiss the pre-detention petition filed by the petitioner therein.

5. Mr. P.M. Thakkar, learned counsel for the petitioner has stated that it is no doubt true that ordinarily the Court did not interfere with pre-detention order i.e., the order of detention which was not executed. However, he has submitted that there is no absolute bar in entertaining the petition in certain circumstances. In support of the same, he has relied on the judgement of the Hon'ble Supreme Court in the case of Additional Secretary to the Govt. of India and others Vs. Smt. Alka Subhash Gadia and another (supra). In that case the Hon'ble Supreme Court has laid down the principle regarding pre-determination in para 30 on page 520 in which the Court has held that powers under Articles 226 and 32 are wide and are untrammelled by any external restrictions, and can reach any executive order

resulting in civil or criminal consequences. However, in the said judgement the Hon'ble Supreme Court has held that it is not correct to say that the Courts have no power to entertain grievances against any detention order prior to its execution. The Courts have necessary power and they have used it in proper cases as has been pointed out in the said judgement, although such cases have been few and the grounds on which the Courts have interfered with them at the pre-execution stage are necessarily very limited in scope and number. The Hon'ble Supreme Court has laid down certain exceptions.

Findings on the preliminary issues:

6. I have considered the judgement of the Hon'ble Apex Court in the case of Alka Subhash Gadia (supra). From the said judgement it is no doubt true that the Hon'ble Apex Court has laid down that power to entertain the petition at pre-detention stage is a limited jurisdiction. However, from that it is not correct that the Courts have no power to entertain the grievance in a detention order prior to its

execution and the Courts have laid down or jurisdiction the principle in which the petition can be entertained. In view of this , the judgement of the Hon'ble Supreme Court in the case of Alka Subhash Gadia (supra) which has been followed by several other judgements of the Hon'ble Supreme Court, in my view, the contention raised by the learned AGP regarding maintainability of the petition at pre-execution stage is rejected. In view of the same, the present petition challenging the order of detention which has not been executed is still maintainable at law.

SUBMISSION ON THE MERITS OF THE MATTER:

7. The learned counsel for the petitioner submitted that the action on the part of respondent No.2 in seeking to detain the petitioner is in violation of Articles 21 and 22 of the Constitution of India. The learned advocate further submitted that the preventive detention is to prevent a person from indulging into anti-social activities which are

prejudicial to the maintenance of public order. The petitioner is a genuine businessman having no past history or criminal antecedents. The petitioner is not connected with any anti-social activity which would warrant the detaining authority to book the petitioner under PASA. The detaining authority appears to have exercised the powers of preventive detention in an arbitrary manner for some oblique motives. The impugned action not being in consonance with the provisions of Articles 21 and 22 of the Constitution of India, the same is required to be quashed and set aside.

7.1 It is the apprehension of the petitioner that the Government has passed the order on the ground that the petitioner is a “property grabber” as defined under the provisions of PASA Act. At this stage I refer to Sec.2(h) of the PASA Act which defines “property grabber” which reads as under:

> “property grabber” means a person who illegally takes possession of any lands not

belonging to himself but belongings to Government, local authority or any other person or enters into or creates illegal tenancies or lease and licence agreements or any other agreements in respect of such lands or who constructs unauthorised structures thereon for sale or hire or gives such lands to any person on rental or lease and licence basis for construction of use and occupation of unauthorised structures or who knowingly gives financial aid to any person for taking illegal possession of such lands or for Construction of unauthorized structures thereon or who collects or attempts to collect from any occupiers of such lands rent, compensation or other charges by criminal intimidation or who evicts or attempts to evict any such occupiers by force without resorting to the lawful procedure or who abets in any manner the doing of any of the above-mentioned things."

7.2 The learned advocate further submitted that the detaining authority has relied upon statements of few members of the society who have directly purchased the plots from its original owners. The society has not sold any plots to anybody and therefore the petitioner cannot be held responsible. Moreover, the said plot holders have constructed residential houses without obtaining any permission at their own cost and risk. Their statements do not disclose any fraud committed by the petitioner or by the society since they have directly purchased the plots by registered sale deed from original owners. Thus, the detaining authority has not properly applied its mind and the subjective satisfaction of the detaining authority is vitiated since it is not based on any cogent material. The detention order is therefore unsustainable in the eye of law.

7.3 The learned advocate for the petitioner submitted that the detaining authority has passed the order on vague, extraneous and irrelevant grounds inasmuch as the adjudication with regard to title of

the land is still pending. At this stage it cannot be assumed that the land in question is a Government land and the society has illegally obtained possession. The petitioner submitted that the question raised in the petition is regarding pre-detention of the detention order. In this connection the petitioner relied upon the judgment of the Hon'ble Apex Court in the case of Additional Secretary, Government of India and others Vs. Smt. Alka Subhash Gadia and another reported in 1992 Supp(1) SCC 496. In that case the Hon'ble Apex Court has laid down the principle regarding pre-detention in para 30 on page 520 which reads as under:(at the 2nd line from bottom).

> “xxxxxxxxxxxxxxxxxxxxx Thirdly, and this is more important, it is not correct to say that the courts <u>have no power to entertain grievances against any detention order prior to its execution</u>. The courts have the necessary power and they have used it in proper cases as has been pointed out above, although such cases have been few and the

grounds on which the Courts have interfered with them at the pre-execution stage are necessarily very limited in scope and number, viz., where the courts are prima facie satisfied (i) that the impugned order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to do so. The refusal by the courts to use their extraordinary powers of judicial review to interfere with the detention orders prior to their execution on any other ground does not amount to the abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question."

7.4 In view of the aforesaid decision, the learned advocate submitted that the order of pre-detention can be challenged on following grounds.

(i) That the impugned order is not passed under the Act, under which it is purported to have been passed.

(ii) That it is sought to be executed against a wrong person.

(iii) That it is passed for a wrong purpose.

(iv) That it is passed on vague, extraneous and irrelevant grounds; or

(v) That the authority which passed it, had no authority to do so.

7.5 The learned advocate for the petitioner, therefore, submitted that the case of the petitioner is covered by the aforesaid exceptions namely,

Exception (i) and Exception (iv). Exception (i) that the impugned order is not passed under the Act under which it is purported to have been passed and Exception (iv) that it is passed on vague extraneous and irrelevant grounds.

7.6 The learned advocate for the petitioner submitted that considering the proposition laid down by the Hon'ble Supreme Court in the aforesaid decision, the petitioner does not appear to fall within the ambit of “property grabber” as defined under Sec.2(h) of the Act. Thus, the case of the petitioner falls under exception (iv) “that it is passed on vague extraneous and irrelevant grounds.”

8. Exception (ii): That it is sought to be executed on a wrong person:

8.1 The learned advocate for the petitioner submitted that the land in question bearing Survey No.466 paiki ad-measuring 3 Acre – 30 Gunthas by the Ashok Housing Society under the registered sale deed dated 20.10.1965 from its original owner on payment

of full consideration as a bona fide purchaser. The petitioner was not the office bearer much less a member of the said society nor was the petitioner in any manner connected with the society. The petitioner became member of the society in 1984 i.e., 19 years after the society had purchased the land. Thus, since the petitioner has not played any role and as the land was purchased by the then promoter and office bearers of the society in the year 1965. Thus, the detention order is sought to be executed against a wrong person. Thus, the case of the petitioner falls under Exception (ii) as stipulated in the case of Alka Subhash Gadia and another reported in 1992 Supp (1) SCC 496, therefore, this Court has necessary power to set aside the detention order at pre-detention stage.

8.2 Exception (iii): It is passed for a wrong purpose:

8.2A The learned advocate for the petitioner submitted that the petitioner was elected as Honorary

Secretary of the society only in 2002 and in discharge of his duties as Secretary the petitioner has been defending the dispute pending before revenue authorities i.e., District Collector, Rajkot and the same Collector, acting his powers as District Magistrate, Rajkot has passed the detention order against the petitioner. Thus, to harass and to pressurize the petitioner not to defend the society in the litigation against Government, the detaining authority has passed the detention order for wrong or incorrect purpose. Thus, the case of the petitioner falls in Exception (iii) as laid down in Alka Gadia's case (supra).

8.3 Exception (iv): That it is passed on vague, extraneous and irrelevant ground:

8.3A The learned advocate for the petitioner submitted that the dispute as to whether the land purchased by the society is a private land or a Government land is pending for adjudication before the revenue tribunal. As against that there is a positive finding given by the Mamlatdar, Rajkot City

vide an order dated 3.4.1999 as per Annexure “C” that from the revenue record it is not shown as a Government land and there is no evidence to establish the title of the Government for the land in question. Thus, it cannot be said that the land purchased by the society is a Government land and, therefore, the petitioner cannot be detained as a “property grabber” within the meaning of Sec.2(h) of the PASA Act. The learned advocate submitted that the detention order is passed by the detaining authority in exercise of power under Sub-section (1) of Sec.3 of the Act read with Sec.2(h) and 2(i) of the Act. Sec.3(1) of the Act confers the power to detain a person, if it is satisfied that such detention is necessary to prevent him from acting in any manner prejudicial to maintenance of public order. Sub-sec.(4) of Sec.3 provides that the persons shall be deemed to be “acting in a manner prejudicial to the maintenance of public order” when such person:-

(a) is engaged in or;

(b) is making preparation for engaging in

any activities whether as a (i) bootlegger or (ii) dangerous person or (iii) drug offender or, (iv) immoral traffic offender or, (v) property grabber, which affect adversely or is likely to affect adversely the maintenance of public order."

8.4 The learned advocate for the petitioner submitted that in a plain reading of the aforesaid provision, it is apparent that the power to detain a person can be exercised only on the grounds enumerated in sub-sec.(1) read with sub-sec.(4) of Sec.3 of the Act. If the exercise of power is not on the face of the order correlated to any of the said grounds for concerned activities which are not germane to any of the said grounds, such exercise would be vitiated by lack of jurisdiction. Thus, to exercise the powers of detention, the detaining authority has to satisfy itself that the petitioner is a "property grabber" as defined under Sec.2(h) of the Act and that the said activities are adversely or likely to adversely affect the maintenance of public

order.

8.5 Exception (v): The authority which passed it has no authority to do so:

8.5A The learned advocate for the petitioner submitted that since the petitioner does not fall within the definition of “property grabber” under Sec.2(h) of the Act and as the petitioner has not indulged into any activity which is prejudicial to maintenance of public order as there is no allegation against the petitioner that the petitioner has taken illegal possession of public or private land by criminal intimidation with the help of musclemen or is indulging in any anti-social activity like land grabbing which is menace to even tempo of life. In the instant case, it cannot be said that the petitioner is a property grabber and the alleged activity has adversely affected or likely to affect the maintenance of public order and therefore the detention order is without jurisdiction and is falls under Exception (v) “that the authority which has passed it, has no authority to do so” as carved out

in the case of Alka Gadia's case (supra). The learned advocate therefore submitted that in above set of facts the case of the petitioner falls within five exceptions carved out by the Hon'ble Supreme Court in the Alka Gadia's case (supra) and therefore this is a fit case to exercise extra ordinary jurisdiction under Article 226 of the Constitution of India to set aside the detention order at the pre-detention stage.

SUBMISSION ON THE MERITS OF THE ORDER BY LEARNED A.G.P. MR L.R. PUJARI:

9.1 The learned AGP further submitted that though the petitioner has raised several contentions and contended that the case of the petitioner falls within the exception laid down in the case of Alka Gadia (supra), however, the case of the petitioner does not fall within the exception laid down in Alka Gadia's case and therefore the petitioner cannot challenge the present petition at the pre-execution stage.

9.2 The learned AGP has also relied upon another judgment of Hon'ble Supreme Court in the case of Navalshankar Ishwarlal Dave Vs. State of Gujarat reported in AIR 1994 SC 1496 particularly paragraphs 3 and 4 of the said judgment. He has also relied upon the Constitution Bench judgment of Hon'ble Apex Court in the case of Haradhan Saha Vs. State of West Bengal reported in AIR 1974 SC 2154 particularly paragraphs 19, 22 & 32 on preventive detention. He has also relied upon another decision in the case of Khudiram Das Vs. State of West Bengal reported in AIR 1975 SC 550 para 8.

9.3 The learned AGP further submitted that the case of petitioner does not fall within the five exceptions mentioned in the case of Smt. Alka Gadia (supra). The learned AGP has submitted that the present petitioner being the son of Ratilal Tanna and also being the member and secretary of the Ashok Co-operative Housing Society was knowing very well that the land is belonging to the Government and stay

orders were also issued by the authorities from time to time. From the various documents and other relevant materials including the statement of the petitioner and statement of various other witnesses and from the panchnama it is very clearly disclosed that petitioner after becoming the secretary of the society transferred various plots to different persons in breach of the stay order passed by the authority from time to time by keeping them in dark about the aforesaid proceedings and orders passed by the authorities from time to time, making them believe that the society was having right, title and interest in the said land even though the same is belonging to the Government and the society never had any right, title or interest in the said property. According to him, the order was rightly passed under the PASA Act as the case of the petitioner is falling within the definition of “property grabber” as defined under Sec.2(h) of the PASA Act. Therefore, it has sought to be executed against the petitioner, a person who is a property grabber as defined under Sec.2(h) of the Act. The order is passed with a view

to prevent the petitioner from grabbing the Government land in future and for the exigency which has arisen as stated herein before and in the grounds of detention as there is great possibility of disturbance of public order. He further submitted that the case of Ratilal Dhanjilal Rajdev, Ex-President is quite different then the petitioner in this behalf. According to him, the role played by petitioner and Shri Ratilal Dhanjibhai Rajdev, President of the Society and the activities indulged by them are quite different and petitioner cannot rely upon the said order in this behalf.

10. I have considered the facts and circumstances of the case. I have also considered the decision of the Hon'ble Supreme Court in Alka Gadia's case (supra) and various decisions cited by both the sides.

CONCLUSION AND FINDINGS:

11. The learned counsel for the petitioner on

merits of the matter clearly demonstrates that the authority has tried to clearly abuse the process of law, and if at this stage, if the authority is allowed to execute the order, the petitioner will have to go in jail and thereafter challenging the same and after the order is set aside the petitioner will be set at liberty but the effect is that the petitioner will have to go in jail. This attitude of the State Government is clearly an abuse of discretionary powers conferred under law and contrary to and inconsistent with the provisions of the Constitution of India particularly Article 21 which provides “Right to Life” which has been greatly expounded by the Hon'ble Supreme Court of India. In view of the same, the contention of the learned AGP that this Court may not hear the petition at this stage is devoid of any merits and the same is required to be rejected.

12. I have considered the facts and circumstances of the case. I have also considered the case of Alka Gadia's case (supra) and also the exceptions laid

down therein. It may be noted that in this case whether the land is a Government land or the society, the matter is still at large pending before the Gujarat Revenue Tribunal. The Gujarat Revenue Tribunal has yet to adjudicate the said issue whether the land belongs to the Government or to the society. Once the issue is not fully decided then the contention of the respondent authority is that the land in question is a Government land and petitioner is a “property grabber” cannot stand in eye of law and therefore the said basic premises on which the Government relied upon is devoid of any merits.

12.1 In my considered view, the land bearing Survey No.466 paiki ad-measuring 3 Acre 30 Gunthas which was purchased by the Ashok Housing Society in the year 1965 by registered sale deed dated 20.10.1965 from its original owner on payment of full consideration, as a bona fide purchaser. In the year 1965 the petitioner was neither the office bearer nor member of the said society. The petitioner was not in any manner connected with the society. The

petitioner became member of the society in 1984 i.e., 19 years after the land was purchased by the society. Thus, since the petitioner has not played any role at all and as the land was purchased by the then promoter and office bearers of the society in the year 1965. If the authority really desires to execute the order they ought to have executed an order on a person who has purchased the property in the year 1965. Thus the contention of the petitioner that the detention order sought to be executed against a wrong person is required to be accepted and the petitioner case is falling within the said exceptions as laid down by the Hon'ble Supreme Court in Alka Gadia's case (supra).

12.2 Secondly, the petitioner was elected as Honorary Secretary of the society only in 2002 and in discharge of his duties as Secretary the petitioner has been defending the dispute pending before revenue authorities i.e., District Collector, Rajkot in this behalf. Thus the District Collector who is also adjudicating the dispute of the society passed the

order of detention against the petitioner as he was defending the society before Adjudicating Authority. Thus the order of detention passed by respondent No.2 in this case is clearly an abuse of process of law and the case of the petitioner is clearly falls within Exception (iii) that the same is passed for a wrong purpose.

12.3 As indicated above, when the main contention as to whether the land belongs to Government or private party is still pending for adjudication before the Revenue Tribunal, and in view of this, the contention of the Government that the land belongs to Government and the petitioner became “property grabber” is contrary to and inconsistent with the provisions of Land Revenue Code as well as authority of revenue tribunal and so the same has vitiated the subjective satisfaction arrived at by the authority under the provisions of PASA Act.

12.4 On plain reading of Sub-sec.(1) of Sec.3 of the Act read with Sub-sec.(4) of Sec.3 of the Act, in

my view, it is apparent that the power to detain a person can be exercised only on the grounds enumerated in Sub-sec.(1) read with Sub-sec.(4) of Sec.3 of the Act. If the exercise of power is not on the face of the order correlated to any of the said grounds for concerned activities which are not germane to any of the said grounds, such exercise would be vitiated by lack of jurisdiction. Thus, to exercise the powers of detention, the detaining authority has to satisfy itself that the petitioner is a “property grabber” as defined under Sec.2(h) of the Act. Further the detaining authority has to satisfy that the said activities are adversely or likely to adversely affect the maintenance of public order. As in the present case the aforesaid ingredients are not proved, therefore, the subjective satisfaction arrived at by the authority is bad in law and liable to be quashed and set aside. Thus when Government is not able to prove that the land belongs to Government as the proceedings of the land are still pending before the Land Revenue Tribunal so the condition precedent for exercising the power and

jurisdiction that person is “property grabber” is lacking. So action of the Government is without jurisdiction. Therefore, the detention order is passed is without jurisdiction and is falls under Exception (v) that the authority which has passed it, has no authority to do so.

12.5 In my considered view of the facts of the case, the case of the petitioner does not fall within the definition of “property grabber” as the petitioner has not been indulged into any activity which is prejudicial to maintenance of public order as there is no allegation against the petitioner that the petitioner has taken illegal possession of public or private land by criminal intimidation with the help of musclemen or is indulging in any anti-social activity like land grabbing which is menace to even tempo of life. In view of the same, the order of detention is also bad in law.

12.6 In this connection I rely on the judgement of the Hon'ble Supreme Court in the case of NAVALSHANKAR ISHWARLAL DAVE AND ANOTHER VS. STATE OF

GUJARAT AND OTHERS reported in 1993 Supp (3) SCC 754. In the aforesaid judgement in para 4 on page 762 the Hon'ble Supreme Court has considered the definition of “property grabber” under Section 2(h) and definition of “unauthorised structure” contained in Section 2(i) of the PASA Act and after referring to the same, the Hon'ble Apex Court has observed as under:

> “Therefore, a person who illegally takes possession of any lands not belonging to himself but belonging to Government, local authority or any other person or enters into or creates illegal tenancies or leave and licence agreements or any other agreement in respect of such lands or who constructs unauthorised structures thereon or enters into agreement for sale or gives on hire or gives such lands or structures to any person on rental or leave or licence basis for construction or for use and occupation of unauthorized structures or who knowingly gives financial aid to any person for taking

> illegal possession of such lands or for construction of unauthorised structures thereon or who collects or attempts to collect from any occupiers of such lands rent, compensation, or other charges by criminal intimidation or who evicts or attempts to evict any such occupier by force without resorting to lawful procedure or who abets in any manner the doing of any of the above mentioned acts or things is a property grabber."

12.7 The Hon'ble Apex Court has considered the objects and reasons of the PASA Act and further observed as follows:

> "Para 4 of the statements and objects of the Act furnishes clue to make the property grabbing or unauthorised construction or dealing therewith as prejudicial to the maintenance of public order thus:

> `Acute shortage of housing accommodation in major cities is being exploited by certain musclemen of some means, often got from bootlegging, by taking illegal possession of public or private lands and constructing or permitting construction thereon of unauthorised structure or selling, leasing or giving on leave and licence such land or unauthorised structure after collecting heavy price, rents, compensation and the like, in so collecting the charge from the occupiers, the musclemen resort to criminal intimidation. The entire community living in the slums is under the grip of perpetual fear of such land grabbers. Such activities of these persons adversely affect the public order."

12.8 After quoting the objects and reasons the Hon'ble Supreme Court has further observed as under:

> "Therefore, <u>taking illegal possession of</u>

public or private lands or unauthorised construction or structures thereon or dealing with those properties or threatening or criminal intimidation of slum dwellers cause or likely to disturb even public tempo disturbing public order. To prevent dangerous person or persons indulging in anti-social activities like land grabbing or dealing with such properties is a menace to even tempo and the legislature intended to provide remedy by detention, be it by the State Government or the authorised officer on subjective satisfaction that such activity or activities adversely affect or are likely to adversely affect public order."-

12.9 I also rely on Section 2(1) of PASA Act which defines "unauthorised structure". I also rely on the judgement of this Court in the case of H.A. Grover Vs. State reported in 1999(3) GLR 2516

particularly paragraph 19 where this Court has held as under (on page 2522):

"19. Thus according to this section, a person can be said to be property grabber when -

(i) he illegally takes possession of any land not belonging to himself, but belonging to Government, local authority or any other person,

(ii) he enters into such land or,

(iii) he enters illegal tenancy over such land or,

(iv) he creates leave and licence agreement or any other agreement in respect of such land, or

(v) he constructs unauthorized structures thereon for sale, or hire, or

(vi) gives such land to any person on rental or leave and licence basis for construction or,

(vii) gives such land for use and occupation of unauthorized structures, or

(viii) who knowingly gives financial aid to any

person for taking illegal possession of such land or,

(ix) he gives such land for construction of unauthorized structures thereon, or

(x) he collects or attempts to collect from any occupier of such land, rent, compensation or other charges by criminal intimidation or

(xi) he evicts or attempts to evict any such occupier by force without resorting to lawful procedure or

(xii) he abets in any manner the doing of any of the above mentioned things".

12.10 After that, in para 20, 21, 22, 23 and 24 this Court has considered the facts of that case and ultimately in paragraph 25 on page 2523 this Court has observed as follows:

"In such state of affairs, there was little material before the detaining authority which could have enabled him to reach subjective satisfaction that the petitioner is a property grabber. The subjective

satisfaction of the detaining authority on this point, therefore, seems to be non-existent and in any case it was imaginary subjective satisfaction of the detaining authority which cannot be upheld. Thus, if the petitioner cannot legally be called as property grabber the order of detention passed against him has to be quashed without entering into further contentions raised by the learned Counsel for the petitioner."

12.11 In view of the aforesaid decision the basic definition of "property grabber" is that a person who is alleged to be of "property grabber" is a person who has no title to the property and has been involved in any of the activities mentioned in Section 2(h) in respect of land to which he has no title or is not the owner. The words "who constructs unauthorized structures thereon for sale or hire" in Section 2(h) also refers to these activities in respect of land to which the person alleged to be "property grabber" is not the owner and has no title.

It is clear from the words of Section 2(h) which read “a person who illegally takes possession of any lands not belonging to him”.

12.12 On conjoint reading of Section 2(h)and (i) with Section 3 of the Act it appears that the subjective satisfaction arrived at by the authority for detaining a person is absent and the authority has not exercised the power in good faith and therefore the order of detention is required to be quashed and set aside and accordingly it is set aside.

13. So the case of the petitioner falls within the four corners of Alka Gadia's case (supra), and in fact, the ratio of Alka Gadia's case (supra) is still good law and the Hon'ble Supreme Court has time and again reiterated the same principle and the said ratio has not been divulged anyway in this behalf. Therefore, this Court rely upon the decision of Alka Gadia's case (supra), and in view of the same, the detention order passed by the authority is bad in law

and the same deserves to be quashed and set aside.

14. It may be noted that the learned AGP has raised contention that even if the petitioner is able to prove his case, this Court may not grant any relief as the petitioner has come before this Court before the detention order has been executed. On the other hand the learned counsel for the petitioner has submitted that from the facts and submissions made by the petitioner and the material which he has demonstrated in this case, it reveals that this is clearly an abuse of process of law and therefore this Court must grant complete relief to the petitioner. From the record it appears that the basic fact that the land is Government land is not established by the Government. Once that is not established, the Government cannot contend that the petitioner is a “property grabber”. It is submitted that the petitioner has defended his case before the authority in a regular adjudicating process. As the authority is not able to prove their case in the revenue proceedings, the authority now desires to make steps

under the provisions of PASA Act, though, in fact, they have not been able to prove any ingredients of “property grabber” under PASA Act. It is their case that even if the authority is not able to prove their case but today the order of detention can be executed and after the petitioner be sent in jail he can challenge the said order and at that time this Court may grant final relief after considering the grounds supplied by them. The learned counsel for the petitioner states that as this is a case of complete abuse of process of law, this formality could not be adhered to.

15. I have considered the rival submissions. In my view this is a complete case of abuse of process of law and therefore this Court can grant relief to the petitioner. What is abuse of process of law is as under:

> “Mandamus can be issued in case of abuse of power. There may be cases where the power is exercised illegally or there is misuse of it. A power vested by statute when exercised

for a purpose other than what is stipulated under the statutory provisions, there is an abuse of power since the collateral purpose was not within the intendment of the statute Mandamus can issue when an authority professing to exercise its powers for a statutory purpose is in fact employing them in furtherance of some ulterior object". (See: Law of Writs, 5th Edition, (1993) Part III Specific Writs – page 665) (Edited by C.K. Thakker, J) (Now Judge of Supreme Court).

15.1 I also rely on the Division Bench judgement of this Court in the case of Laxman Popatbhai Vs. State of Gujarat reported (1976) 17 GLR 370 (Coram: J.B. Mehta and A.D. Desai, JJ) where the petitioner, a Government servant, was suspended and a prolonged enquiry against him ended in his favour. He was acquitted of all charges and as per Rule 152 of the Bombay Civil Services Rules, 1959, the State ordered the entire suspension period as duty period paying

all the backwages. Even a civil suit to recover alleged loss failed. Yet, again the Government sought to forfeit his pension on groundless allegations unsupported by any evidence. So a writ of mandamus was prayed against the State. It was contended that at the most the High Court could quash the order by directing the Government to hold fresh enquiry. This Court negativing the said contention on page 381 has observed as under:

> "To concede such a right to the State would be to permit complete abuse of power in the context of such cases and deny the guarantee of the rule of law enshrined in our Constitution to all civil servants".

Ultimately, on the same page at bottom the Division Bench observed as under:

> "We are entitled to hold that no fresh enquiry in the case shall be held against the petitioner and that the hatchet shall be

> buried once for all because it would be gross abuse of power to permit any such enquiry after all these infructuous proceedings when the State had ample opportunity to prove its alleged charges and when it itself had treated the concerned Government servant as honourably acquitted and even a civil suit had failed."

16. The contention of the learned AGP that Government has power to Act under the PASA Act and therefore this Court may not interfere with the said power which has been exercised by the Government. The said argument of the learned AGP cannot be accepted. For coming to the said conclusion, I rely on the following:

> "The first requirement is the recognition that all power has legal limits. The next requirement, no less vital, is that the Courts should draw those limits in a way which strikes the most suitable balance

between executive efficiency and legal protection of the citizen. Parliament constantly confers upon public authorities powers which on their face might seem absolute and arbitrary. But arbitrary power and unfettered discretion are what the Courts refuse to countenance. They have woven a network of restrictive principles which require statutory powers to be exercised reasonably and in good faith, for proper purposes only, and in accordance with the spirit as well as the letter of the empower Act. They have also, as explained elsewhere, imposed stringent procedural requirements. Here we are concerned with the substance of administrative discretion." (See: Administrative Law, 9th Edition, by H.W.R. Wade & C.F. Forsyth – Part V Discretionary Power - Chapter 11 Abuse of Discretion on page 343)"

17. In view of this, though the Government has

power to pass order, the same should be exercised within the legal limits. When the order has been passed without statutory limits, the order can be struck down.

18. From the record it appears that the order dated 25.9.2005 passed by the District Magistrate, Rajkot, detaining Ex-President Ratilal Dhanjibhai Rajdev as property grabber who is accused No. 1 in FIR has already been set aside by the Advisory Board. In view of the aforesaid detention order, the apprehension expressed by the petitioner that the authority may try to pass order against the petitioner for his detention is well founded and therefore this Court quashes and sets aside the impugned action of the respondent authority seeking to detain the petitioner, namely, Shri Sureshbhai Ratilal Tanna under the provisions of PASA Act as being illegal, invalid, unfair and suffering from total non-application of mind and violative of Article 14, 19(1)(g) and 21 of the Constitution of India. Rule is made absolute with no order as to costs. Direct service is permitted.

(K.M. Mehta, J.)

syed/